

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 64028-3-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
GEINLY F. DIAZ-DIAZ,)	
)	
Appellant,)	
)	UNPUBLISHED OPINION
and Rafael Diaz-Alvarado, a/k/a)	
Rafael A. Diaz,)	
)	
Defendant.)	FILED: August 2, 2010

Spearman, J.--Geinly Diaz-Diaz appeals his jury conviction for possession of cocaine, arguing that his arrest was not supported by probable cause and that the trial court therefore erred in denying a CrR 3.6 motion to suppress evidence obtained as a result of his arrest. We affirm.

FACTS

The facts are not in dispute. In January and February of 2009, Seattle Police Detective Diana LaFreniere worked with a confidential informant to buy cocaine from Rafael Diaz-Alvarado. The first two purchases took place on

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January 13 and 22. On both occasions the informant, in the presence of LaFreniere, called Diaz-Alvarado's cell phone, and Diaz-Alvarado told the informant that he would meet the informant in about five minutes. Both times, Diaz-Alvarado arrived at the meeting place in a green Ford Taurus with license plate 673 XRX, exited from a passenger seat, sold cocaine to the informant, and then left in the same vehicle. The informant believed Diaz-Alvarado "went all day long making drug transactions." Detective LaFreniere determined that Diaz-Alvarado was not the registered owner of the Taurus.

Detective LaFreniere had the informant arrange a third purchase on February 10, intending to arrest Diaz-Alvarado after the transaction. Diaz-Alvarado chose the location, a residential area in Ballard, and told the informant over his cell phone, "I'll be right there." He arrived in the same green Taurus with license plate 673 XRX, exited from a rear passenger seat, and sold cocaine to the informant while the two were standing approximately ten feet away from the Taurus. Detective LaFreniere was about to order the arrest teams to move in when five to seven other individuals approached Diaz-Alvarado and engaged in what LaFreniere believed to be additional drug sales. During these transactions the Taurus kept inching forward, and Diaz-Alvarado moving closer to the Taurus. By the last transaction Diaz-Alvarado had reached the door of the back passenger seat, just as a red Toyota 4Runner pulled up along the driver's side of the Taurus. The occupants of the 4Runner contacted Diaz-Alvarado and

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the occupants of the Taurus through the 4Runner's passenger-side window. Police believed the 4Runner's occupants were trying to conduct a drug transaction, but they did not see any items exchanged. Around this time, five or six minutes after the informant purchased drugs from Diaz-Alvarado, LaFreniere ordered the arrest teams to move in. Police arrested the occupants of the Taurus, including Diaz-Diaz, who was in the driver's seat. Police searched Diaz-Diaz incident to his arrest; they found \$230 and a gum container holding 3.2 grams of crack cocaine in his front pants pocket.

Diaz-Diaz and Diaz-Alvarado were charged in the same information, Diaz-Diaz with one count of possession of cocaine in violation of RCW 69.50.4013. Diaz-Diaz filed a CrR 3.6 motion to suppress all evidence of the cocaine, arguing that he had been arrested without probable cause and that any fruits of the unlawful search and seizure must be suppressed. He argued that, given the absence of any interaction between himself and Diaz-Alvarado once the latter left the car, his mere presence, even as the driver, was insufficient to make him an accomplice. The State argued that there was probable cause to believe that he was an accomplice to Diaz-Alvarado in the crime of delivery of a controlled substance because he was driving the car. The State acknowledged that it did not know whether Diaz-Diaz had been inside the Taurus for either of the January sales.

A CrR 3.6 hearing was held. Detective LaFreniere testified that she

called for the arrest of the occupants of the Taurus because “everyone was involved in the drug transaction, whether they were driving individuals to the scene, whether they were holding additional narcotics in the vehicle, and that was essentially a moving container of the evidence, the vehicle, and that there was deliveries going on. So evidence of the crime as well as safety of the officers.” Defense counsel argued that the State offered no evidence that Diaz-Diaz knowingly promoted any crimes and that no individualized suspicion existed with respect to him. Furthermore, the detective’s testimony that the car was inching away suggested that the driver was attempting to disassociate himself from the criminal activity. The trial court, stating that the issue was “close,” denied the motion. The court noted that the vehicle driven by Diaz-Diaz had been used in prior drug transactions and that Diaz-Alvarado was believed to run, in the court’s words, a “mobile drug market.” Defense counsel’s motion for reconsideration was denied. The court entered written findings of fact and conclusions of law, including the following conclusions of law that are challenged by Diaz-Diaz on appeal:

Taking into account all of the observations made by Detective LaFreniere, her belief that the Defendant, as the driver of the vehicle, was aiding Rafael in the commission of a crime was a reasonable one. The belief that someone in the Defendant’s position would, under the circumstances, have knowledge of Rafael’s criminal acts is also reasonable.

Probable cause to arrest exists where the totality of the facts and circumstances known to the officers at the time of arrest would warrant a reasonably cautious person to believe an offense is being committed. That standard has been met here.

At trial, Diaz-Diaz presented an unwitting possession defense. The jury found him guilty on July 29, 2009, and the trial court, based on an offender score of zero, imposed a standard-range sentence of 20 days in custody.

DISCUSSION

Diaz-Diaz argues that there was no probable cause to arrest him and that the trial court erred in denying the CrR 3.6 motion to suppress all fruits of his unlawful arrest. The State argues that Diaz-Alvarado's "moving drug bazaar" required the assistance of a driver, and that Diaz-Diaz assisted Diaz-Alvarado by providing such assistance. We affirm.

We review a trial court's findings of fact upon a CrR 3.6 hearing for substantial evidence. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Unchallenged findings are verities on appeal. State v. Acrey, 148 Wn.2d 738, 745, 64 P.3d 594 (2003). We review de novo a trial court's legal conclusion of whether the evidence meets the probable cause standard. In re Det. of Petersen, 145 Wn.2d 789, 799, 42 P.3d 952 (2002).

Under the Fourth Amendment to the United States Constitution, a warrantless arrest must be supported by probable cause. State v. Bonds, 98 Wn.2d 1, 8–9, 653 P.2d 1024 (1982). Probable cause to arrest exists "when facts and circumstances within the arresting officer's knowledge are sufficient to cause a person of reasonable caution to believe that a crime has been committed." State v. Huff, 64 Wn. App. 641, 646–47, 826 P.2d 698 (1992).

“‘[T]he arresting officer’s special expertise in identifying criminal behavior must be given consideration.’” State v. Scott, 93 Wn.2d 7, 11, 604 P.2d 943 (1980) (quoting State v. Cottrell, 86 Wn.2d 130, 132, 542 P.2d 771 (1975)). Probable cause must exist with respect to each individual. Ybarra v. Illinois, 444 U.S. 85, 91, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979). “[A] person’s mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person.” Id. (citing Sibron v. New York, 392 U.S. 40, 88 S. Ct 1889, 20 L. Ed. 2d 917 (1968)). For example, a moderate smell of marijuana emanating from a vehicle, without more, does not establish probable cause to arrest all occupants. State v. Grande, 164 Wn.2d 135, 138, 187 P.3d 248 (2008).

A person acts as an accomplice if, “[w]ith knowledge that it will promote or facilitate the commission of the crime, he: (i) solicits, commands, encourages, or requests such other person to commit it; or (ii) aids or agrees to aid such other person in planning or committing it.” RCW 9A.08.020(3)(a).

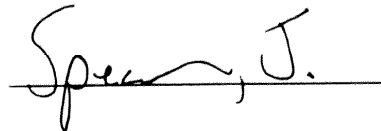
Here, the officers had probable cause to arrest Diaz-Diaz based on their belief that he was acting as an accomplice to Diaz-Alvarado in the delivery of cocaine. The Taurus was the same vehicle that had transported Diaz-Alvarado to previous sales, and officers were told by the informant that the informant believed Diaz-Alvarado conducted transactions “all day long” in this manner. On the third buy, Diaz-Diaz drove Diaz-Alvarado to the pre-arranged location only five to ten

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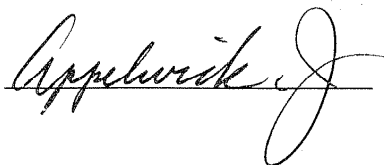
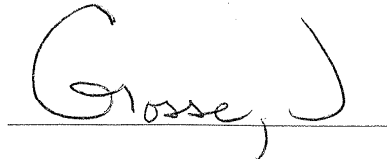
minutes after Diaz-Alvarado told the informant over his cell phone that he would “be right there.” Diaz-Diaz waited in the Taurus as Diaz-Alvarado conducted not only the arranged deal within viewing distance, but several more apparent drug deals, with the last taking place directly next to the car. Diaz-Diaz drove Diaz-Alvarado to the scene. He began inching the Taurus forward as the deals were going on, apparently waiting for to complete his transactions before driving him away. All this activity took place within five or six minutes after the informant purchased drugs from Diaz-Alvarado.

In sum, the totality of the facts and circumstances known to officers were sufficient to cause a reasonable person to believe that Diaz-Diaz aided Diaz-Alvarado in delivering cocaine and had knowledge that his actions would facilitate such delivery. The trial court did not err in denying the CrR 3.6 motion.

Affirmed.

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WE CONCUR:

Handwritten signature of Appelwick, J. in cursive script, underlined.Handwritten signature of Grosse, J. in cursive script, underlined.